La Gloria Oil and Gas Company *and* Paper, Allied-Industrial, Chemical & Energy Workers, International Union, Local 4-202. Cases 16–CA–22313 and 16–CA–22316

March 21, 2003

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to charges and an amended charge filed on October 28 and 29, 2002, the General Counsel issued the consolidated complaint on November 5, 2002, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 16–RC–10269. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the consolidated complaint, and requesting that the proceeding be stayed.

On November 22, 2002, the General Counsel filed a Motion for Summary Judgment. On December 17, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed an opposition to the motion for summary judgment, and also filed a motion to stay. The General Counsel thereafter filed a reply to the Respondent's opposition and motion to stay.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain and to furnish information, but contests the validity of the certification in the underlying representation proceeding on the ground that the Board improperly overruled its determinative challenges to the ballots of two employees (Floyd Saylor and William Lampe) whom Respondent had discharged prior to the election. The Respondent also contends that the Board should stay further proceedings in this case because the Board's decision in the prior consolidated unfair labor practice case,[1] which found that the discharges of Saylor and Lampe were unlawful, is currently pending before the United States Court of Appeals for the Fifth Circuit on the Respondent's petition for review and the Board's cross-petition for enforcement.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no genuine issues of material fact warranting a hearing with respect to the Union's request for information. The complaint alleges, and the Respondent's answer admits, that the Union requested the names, addresses, and telephone numbers of the unit employees, and that the Respondent refused to furnish this information to the Union. Although the Respondent's answer denies that this information is necessary and relevant to the Union's duties as the exclusive bargaining representative of the unit employees, it is well established that such information is presumptively relevant and must be furnished on request. *Baker Concrete Construction, Inc*., 338 NLRB No. 48 (2002); *Maple View Manor, Inc*., 320 NLRB 1149 (1996), enfd. mem. 107 F.3d 923 (D.C. Cir. 1997); *Masonic Hall*, 261 NLRB 436 (1982); *Mobay Chemical Corp*., 233 NLRB 109 (1977). The Respondent has not asserted any basis for rebutting the presumption, apart from its argument, rejected above, that the Union's certification is invalid.

Finally, we deny the Respondent's request that our decision and order in this proceeding be stayed given the pending petitions for review and enforcement of the Board's decision in the prior consolidated unfair labor practice case that the discharges of Saylor and Lampe violated Section 8(a)(3) of the Act. The Respondent made a similar request for a stay after issuance of the Board's decision in the prior consolidated proceeding directing that the ballots of Saylor and Lampe be opened and counted, and the Board denied that request by supplemental order dated September 26, 2002.[2] As indicated in the supplemental order, Section 10(g) of the Act provides that the commencement of proceedings in a United States court of appeals pursuant to a petition for

[1] 337 NLRB No. 177 (2002).

[2] The supplemental order is unpublished.

enforcement or review "shall not, unless specifically ordered by the court, operate as a stay of the Board's order." The Respondent does not assert that a stay of the Board's order has been issued by the court. The Respondent must therefore honor the certification, and its duty to bargain is not postponed by the pending petition for court review. See *More Truck Lines*, 338 NLRB No. 111 (2003); *M.J. Metal Products*, 330 NLRB 502, fn. 2 (2000), enfd. 267 F.3d 1059 (10th Cir. 2001); and *Midland-Ross, Inc*., 243 NLRB 1165, 1166 (1979), enfd. 653 F.2d 239 (6th Cir. 1981).

Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Delaware corporation, with a facilty in Tyler, Texas, has been engaged in the business of refining petroleum products. During the 12-month period preceding the issuance of the consolidated complaint, the Respondent sold and shipped from its Tyler, Texas facility goods valued in excess of $50,000 directly to customers located outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held December 15, 2000, the Union was certified on October 10, 2002, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> INCLUDED: All truck drivers employed by the Employer on the payroll of PSI at its Tyler, Texas facility.
>
> EXCLUDED: All other employees, including drivers of any common carriers, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated October 8 and 16, 2002, the Union requested the Respondent to bargain and to furnish information, respectively. Since October 14, 2002, the Respondent has refused the Union's request to bargain, and, since October 22, 2002, the Respondent has refused to provide the requested information. We find that these refusals constitute an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after October 14, 2002, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, La Gloria Oil and Gas Company, Tyler, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Paper, Allied-Industrial, Chemical & Energy Workers, International Union, Local 4-202, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if

[3] Members Schaumber and Walsh did not participate in the underlying representation proceeding. However, they agree that the Respondent has not cited any new evidence or special circumstances warranting a hearing in this proceeding and that summary judgment is appropriate.

an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All truck drivers employed by the Employer on the payroll of PSI at its Tyler, Texas facility.

EXCLUDED: All other employees, including drivers of any common carriers, guards and supervisors as defined in the Act.

(b) Furnish the Union the information it requested on October 16, 2002.

(c) Within 14 days after service by the Region, post at its facility in Tyler, Texas, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 16 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 14, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 21, 2003

Wilma B. Liebman,	Member
Peter C. Schaumber,	Member
Dennis P. Walsh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice "Posted by Order of the National Labor Relations Board'' shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT refuse to bargain with Paper, Allied-Industrial, Chemical & Energy Workers, International Union, Local 4-202, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All truck drivers employed by us on the payroll of PSI at our Tyler, Texas facility.

EXCLUDED: All other employees, including drivers of any common carriers, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on October 16, 2002.

LA GLORIA OIL AND GAS COMPANY